

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

May 23, 2005

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TERRELLE VINSON MARTIN,

Defendant - Appellant.

No. 04-1348

(D. Colorado)

(D.C. No. 03-CR-252-D)

ORDER AND JUDGMENT*

Before **SEYMOUR, HARTZ, and McCONNELL**, Circuit Judges.

Defendant Terrelle Vinson Martin was convicted after a jury trial of unlawful possession of a firearm by a convicted felon. *See* 18 U.S.C. § 922(g). Because Defendant has multiple prior felony convictions, he was designated an armed career criminal. *See* 18 U.S.C. § 924(e). His resulting total offense level, 33, and criminal history category, VI, yielded a guidelines range of 235-293

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

months' imprisonment. The district court sentenced Defendant to the 235-month minimum sentence.

Before the sentencing hearing Defendant filed a motion arguing that in light of *Blakely v. Washington*, 124 S. Ct. 2531 (2004), the Sentencing Guidelines were unconstitutional. The district court denied the motion and Defendant appeals.

While this matter was on appeal the United States Supreme Court handed down *United States v. Booker*, 125 S. Ct. 738 (2005). The government concedes that *United States v. Labastida-Segura*, 396 F.3d 1140 (10th Cir. 2005), requires Defendant's case to be remanded for resentencing.

We agree and REMAND to the district court for resentencing.

ENTERED FOR THE COURT

Harris L Hartz
Circuit Judge